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No. 814

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

IN RE APPLICATION OF ARTHUR J. PLANTAMURA FOR ADMISSION TO THE BAR WITHOUT EXAMINATION.

RESPONDENT'S BRIEF OPPOSING WRIT OF CERTIORARI.

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To The Honorable, The Chief Justice and The Associate Justices of the Supreme Court of the United States:

The respondent opposes the review of this cause, for the following reasons:

a. Admission to practice law in a State and befores its Courts belongs to that State, and is a privilege and not a right.

b. There is no constitutional question involved in the petition.

c. The petitioner did not raise the constitutional question until after the final decision of the Supreme Court of Errors of the State of Connecticut had been rendered, when he first raised it in a petition for reargument.

d. The petitioner was afforded the privilege of taking the bar examinations, but he declined to do so, demanding admission without examination.

COURT RULES FOR ADMISSION TO BAR.

The Superior Court of the State of Connecticut has adopted rules governing admission to the bar.

There are two methods governing admission to the bar, a. by taking bar examinations, and b. admission on motion without examination.

a. The provision relating to taking bar examina-

tions (which is reproduced in the Appendix) Connecticut Practice Book Sections 1, 4 and 7, provides that any citizen of the United States may take the bar examinations, if he complies with the standards and requirements set forth.

b. The provision relating to admission on motion without examination is reproduced in the petitioner's brief, in the Appendix, pages 10a, 11a, 12a, 13a; and is cited as Section 8.

These two methods were concisely stated by the Superior Court, in the decision denying the petitioner's application, thus

> "Under established rules, any qualified person may take examinations for admission. If, however, he chooses to seek admittance without examination, he is not the victim of discrimination if the Committee and the Bar insist on strict compliance with the rule."

Appendix to petitioner's brief, page 9a.

It is axiomatic that both the admission and disbarment of attorneys are judicial acts, and that one is admitted to the Bar and exercises his functions as an attorney "not as a matter of right, but as a privilege".

In re Thatcher, 80 Ohio St. 492, 654

In re Durant, 80 Conn. 140.

> "In this country the Courts of the United States have always controlled the admission of attorneys. * * * Their admission or their exclusion is not the exercise of a mere ministerial power.

It is the exercise of judicial power, and has been so held in numerous cases."

In re Day, 181 Ill. 73 at 89.

A court which extends the privilege to one to be admitted as an officer of such court may surely impose conditions upon such privileges granted by it.

"Article fifth, section 1 (Connecticut Constitution adopted in 1818) states: 'The judical power of the State shall be vested in a supreme court of errors, a superior court, and such inferior courts as the general assembly shall, from time to time, ordain and establish: the powers and jurisdiction of which courts shall be defined by law'. Fixing the qualifications for, as well as admitting persons to, the practice of law in this state has ever been an exercise of judicial power. * * * The power to admit persons to practice in this state has been exercised with the help and assistance of committees of the bar, pursuant to rules having the sanction of the judges of the Superior Court. * * * The reasons for this principle and practice have been fully discussed in our cases. It suffices to say that attorneys are officers of the Court appointed to assist the Court in the administration of justice and that the property, liberty and often the lives of their clients are in their hands, so that a very high degree of intelligence, knowledge, academic and legal training, judgment and, above all else, integrity is demanded."

Heilberger v. Clark et al, 148 Conn. 177, 185, 186.

An attorney from another state seeking admission without examination must comply with the rules of court governing such admission.

The petitioner was afforded the opportunity to apply to take the bar examinations, but he declined to do so.

Instead he insisted upon being admitted without taking the bar examinations, when he did not qualify under Section 8 of the rules, petitioner's appendix pages 10a, 11a, 12a. And he relies on the case of **Rudolph Schware v. Board of Bar Examiners, 353 U. S. 232, 1 Law Ed. 2nd 796; 77 S. Ct. 752** in support of his claim.

That case supports the decision of the Superior Court and Supreme Court of Errors printed in the petitioner's appendix, pages 1a, and 5a. There, the petitioner Schware applied for permission to take the bar examinations. His application was denied, and the denial was upheld by the Supreme Court of New Mexico, on the ground that the petitioner had not shown good moral character.

On certiorari the United States Supreme Court reversed the judgment below because on the record the New Mexico Supreme Court could not reasonably find that the petitioner had not shown good moral character.

The fact that the petitioner more than fifteen years before had admitted membership in the Communist party, and it was not shown to have been anything more than faith in a political party lawful

at that time, violated the due process law, because that did not make the petitioner "a person of questionable character".

Said the Court "A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. * * * Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for finding that he fails to meet these standards, or when their action is individiously discriminatory". Law Ed. pages 801, 802.

In that case, the State conceded that Schware was fully qualified to take the examination in all other respects other than good moral character. Thus, on page 802 the Court said:

> "The undisputed evidence in the record shows Schware to be a man of high ideals with a deep sense of social justice. Not a single witness testified that he was not a man of good character". Despite this showing the Court below thought certain facts raised doubts about his moral fitness. This was erroneous reasoning and had no factual basis.

On page 807, the Court stated the authority possessed by Courts in matters of admission to the bar, as follows:

> "Admission to practice in a State and before its Courts necessarily belongs to that State. * * *

It is beyond this Court's function to act as overseer of a particular result of the procedure established by a particular State for admission to its bar. * * * Especially in this realm it is not our business to substitute our judgment for the State's judgment — for it is the State in all the panoply of its powers that is under review when the action of its Supreme Court is under review."

That law confirms the respondent's claims.

In the case at bar, the petitioner admitted that he never actually practiced in the District Court of the United States a single instance.

"Although the applicant claimed that he had practiced patent law in Washington for more than five years, he admitted that at no time had he had occasion to practice, nor had he in fact practiced, in the United States District Court for the District of Columbia, which is 'the highest Court of original jurisdiction' in the District of Columbia."

Supreme Court of Errors decision, petitioner's appendix page 2a.

The requirement, in connection with an application for admission without examination, that the applicant shall have actually practiced in the highest court of original jurisdiction, is a proper, reasonable and just pre-requisite.

"Clearly, the word 'actually' was inserted to emphasize the necessity of practice before a court as distinguished from a mere unexercised right to prac-

tice. Actual practice in the highest Court of original jurisdiction provides a crucible for testing legal knowledge and its practical application in behalf of clients. The framers of the rule could reasonably consider that such a requirement would provide a fair and desirable safeguard for the citizens of Connecticut who might employ an attorney who had been a member of the bar of another jurisdiction and thereafter had been admitted without examination to practice in this State. In the light of the 1941 amendment, section 8 must be construed to require 'actual practice' and not merely 'authority to practice'."

Supreme Court of Errors decision, supra Appendix 3a.

No Constitutional Question Involved.

As heretofore submitted, the rules relating to admission to the bar, permits any qualified person to take the examinations.

The petitioner is afforded the equal protection of the laws, and is not deprived of any rights or privileges under the Due Process clause of the Fourteenth Amendment to the United States Constitution.

In Re Application of Dodd, 132 Conn. at 246.

If he refuses to take the examinations, as the petitioner is intent upon doing, he should not be permitted to claim his rights or privileges have been infringed.

But he claims, section 8 contains no rational connection with his fitness or capacity. This has been clearly answered in the decision of the Supreme Court of Errors, cited by the petitioner, in his Appendix 1a to 4a inclusive.

However, the petitioner did not raise any constitutional question until he filed a motion for reargument in the Supreme Court of Errors.

The petitioner, in the record which he filed, included his motion for reargument and statement in support thereof. In that statement, it appears "the Court has given no weight to the case of In re Application of Dodd, 132 Conn, 237". The statement claimed that the Dodd case interpreted the language "actual" and held unequivocally at page 242 that "Practice of law is not confined to practice in Court".

As a matter of fact the Dodd case decided that actual practice in court meant exactly what it said; and since Dodd had not actually practiced in the highest court of original jurisdiction (page 241) he was not entitled to admission without examination (page 246). The decision at its conclusion says "He is not remediless. He can take the examination."

In his brief in the Supreme Court of Errors case the petitioner laid great stress on the Dodd case. In his statement for re-argument he specifically claims that he cited the Dodd case. Evidently, just because the Supreme Court of Errors did not specifically quote the Dodd case, the petitioner imagines the Court did not consider it.

In his present brief, the petitioner, on page 2

claims the State Court disregarded earlier applicable decisions which conflict with the ruling in the present case. He does not cite a single case where that can be found. In fact all the cases are consistent with the decision in issue.

The petitioner's brief relies on two other Connecticut cases, viz: **State Bar Association v. Connecticut Bank & Trust Co.,** 145 Conn. 222, and **Heilberger v. Clark,** 148 Conn. 177.

The Bar Association case against the bank dealt with a definition of the general practice of the law. It did not involve practice in any court much less actual practice.

The Heilberger case deals with an applicant claiming that he was entitled, unconditionally to take the bar examinations, even though he did not qualify both because his educational qualifications did not meet the requirements as to his prelaw education and as to graduation from a law school which was accredited by the Committee. He endeavored to circumvent these two objections relying upon a statute which permitted him and those similarly situated, to take the examinations. The Court held the statute unconstitutional: **page 191.**

Therefore there was no rational reason for claiming for the first time, in the motion for reargument, the question of unconstitutionality.

There was no new and unexpected basis for a claim by the petitioner of the denial of a Federal right, and the claim that a constitutional question is

involved comes too late. **Great Northern Railway Co. v. Sunburst Oil & Refining Co.**, 77 Law Ed. 360.

Among the grounds upon which the Supreme Court of the United States may deny a writ of certiorari are that the decision may be supportable as a matter of State law not subject to review by the Supreme Court. **Maryland v. Baltimore Radio Show,** 338 U. S. 912; 94 Led. 562; 70 S. Ct. 252.

CONCLUSION.

The rules established by the Superior Court permit any qualified person to take examinations for admission to the bar. The petitioner refuses to comply with this rule.

The only suggestion or intimation for such refusal may be his reference to the fact that "an attorney from another State, who may be 'too advanced' in years to take the written examination", as appears on page 19 of the petitioner's brief.

"Proceedings for admission to the bar 'are in the nature of investigations by the courts or their representatives to determine whether the candidate is qualified to become an officer of the Courts'. **Heilberger v. Clark,** 148 Conn. 177 182, 169 A. 2nd 652. Such proceedings 'are taken primarily for the purpose of preserving the courts of justice from the official ministration of persons unfit to practice in them'." **In Re Application of Arthur J. Plantamura,** 176 A 2nd 61, cited in full in petitioner's Appendix

This is a fair, just and reasonable rule, and does not deny the equal protection of the law to the petitioner, nor does it violate the Fourteenth Amendment of the United States Constitution.

Another rule is also established — Section 8 — permitting qualified attorneys of other states to be admitted without examination. One of the requirements of this rule provides that the lawyer shall have actually practiced in the courts of the highest original jurisdiction. This rule, likewise, is to preserve the Courts of justice from official ministration of persons unfit to practice in them. If the applicant chooses to be admitted without examination, he is not the victim of discrimination if the Committee and the bar insist on strict compliance with the rule. This rule, too, is a fair, just and reasonable one.

Wherefore your respondent respectfully prays that the petition for a Writ of Certiorari be denied.

Respectfully submitted,
Standing Committee for Fairfield County on Recommendations for Admission to the Bar,
Respondent.

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